DOCKET FILE COPY ORIGINAL 9301032

92-254

Mark Van Loucks
333 West Hampden Avenue, Suite 1005
Englewood, Colorado 80110
(303) 781-0827

January 11, 1993

RE: MM Docket #92-254

Mr. Bobbie Baker
Federal Communications Commission
Washington, DC 20554

VIA FAX - (202) 653-9659

Dear Mr. Baker:

Kindly treat my Comments of Mark Van Loucks in Support of Application for Review, filed September 25, 1992 in support of the Kaye, Scholer Application for Review, as comments filed in response to your Public Notice - Request for Comments, adopted October 30, 1992 in this docket matter.

Thank you,

Mark Van Loucks

MVL/ct

P.S. Further, please let me know how I can obtain copies of the Comments filed in this matter (due January 22, 1993) so that I may offer response thereto if appropriate.

ORIGINAL

92090858

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of	)
	)
Petition for Declaratory Ruling	)
Concerning Section 312(a)(7)	)
of the Communications Act	)

COMMENTS OF MARK VAN LOUCKS IN SUPPORT OF APPLICATION FOR REVIEW

John D. Seiver
Theresa A. Zeterberg

Cole, Raywid & Braverman
1919 Pennsylvania Avenue, N.W.
Washington, D.C. 20006
(202) 659-9570

September 25, 1992

TABLE OF CONTENTS

TABLE OF CONTENTS.....i

SUMMARY.....ii

COMMENTS IN SUPPORT OF APPLICATION FOR REVIEW.....1

BACKGROUND.....3

I. THE COMMISSION SHOULD CONSIDER EVIDENCE OF THE HARM TO CHILDREN AND OTHERS ARISING FROM EXPOSURE TO SHOCKING AND INDECENT POLITICAL ADVERTISING.....6

II. THE COMMISSION CLEARLY POSSESSES THE AUTHORITY TO CHANNEL THE ANTI-ABORTION SPOTS.....11

III. THE COMMISSION'S ADOPTION AND ENFORCEMENT OF CHILDREN'S TELEVISION PROGRAMMING RULES STANDS AT ODDS WITH ITS REFUSAL TO PROTECT CHILDREN FROM PSYCHOLOGICALLY DAMAGING PROGRAMMING.....14

CONCLUSION.....15

SUMMARY

Mark Van Loucks lives in Englewood, Colorado, a Denver suburb. During the summer of 1992, Mr. Van Loucks learned that a Colorado Christian Pro-Life Party candidate for the U.S. Senate had purchased advertising time from local Denver network-affiliate television stations to air political advertisements denouncing abortion. Concerned about the negative psychological impact that viewing these spots could have on his family, Mr. Van Loucks initiated a campaign to limit the airing of these anti-abortion spots. Although Mr. Van Loucks has not participated in this proceeding from its inception, he submits these Comments to assist the Commission during its consideration of the pending Application for Review.

Mr. Van Loucks seeks to supplement the record in this proceeding, providing the Commission with information critical to the resolution of the Application for Review, but which has not yet been argued or introduced by any participating party. Mr. Van Loucks' Comments contain statements by professionals regarding the effect these anti-abortion advertisements could have on children and others who may be harmed by the shocking and offensive nature of the spots. A careful analysis of this evidence, along with the legal arguments already advanced by the Petitioners in the proceeding, leads to the inescapable conclusion that the public interest will only be served by allowing broadcasters to channel the airing of these anti-abortion spots to times when children are not likely to be in the audience.

Before The
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)
	)
Petition for Declaratory Ruling	)
Concerning Section 312(a)(7)	)
of the Communications Act	)

To: The Commission

COMMENTS IN SUPPORT OF APPLICATION FOR REVIEW

Mark Van Loucks ("Van Loucks"), pursuant to Sections 1.115 and 1.41 of the Commission's Rules, hereby respectfully submits these Comments in support of the Application for Review filed by Kaye, Scholer, Fierman, Hays & Handler ("Kaye, Scholer"), seeking review by the Commission of a Letter Ruling issued by the Chief, Mass Media Bureau, on August 21, 1992 (FCC Ref. 8210-AJZ/MJM)("Letter Ruling").[1/] In the Letter Ruling, the Bureau denied Kaye, Scholer's July 29, 1992 Petition for Declaratory Ruling, which requested that the Commission find certain political advertising indecent within the meaning of 18 U.S.C. § 1464, thereby entitling broadcast licensees to censor or otherwise decline to broadcast those advertisements during hours when there is a reasonable risk that children may be in the audience. The particular advertisements subject to the Petition

---

1/ Kaye, Scholer is a law firm representing a number of, but unnamed, television and radio stations interested in obtaining guidance from the Commission consistent with the Petition for Declaratory Ruling.

were political, anti-abortion spot announcements presenting graphic photographs of bloodied and allegedly aborted fetuses and fetal tissue (the "anti-abortion spots").[2/]

Van Loucks did not participate previously in these declaratory ruling proceedings regarding the anti-abortion spots.[3/] However, as detailed below, and in his statement, Van Loucks did pursue other judicial and practical courses of action in an attempt to minimize the potential psychological harm these anti-abortion spots could cause his family and others. Van Loucks now seeks to participate in this proceeding through the submission of Comments to supplement the Record. As attachments

---

2/ Although Kaye, Scholer did not submit any of the advertisements for the Commission's review, another party, Gillette Communications, filed a similar Petition for Declaratory Ruling and included a video tape sample of relevant political advertisements depicting bloodied fetuses. Because Gillette has not applied for review of the letter ruling, Van Loucks submits a video tape of a spot run on KUSA-TV in Denver, as Exhibit A, to the original of his statement, to provide the Commission with the opportunity to observe the shocking nature of the photographs and images.

3/ Because of the timeframe within which the Commission decided the Petition for Declaratory Ruling, on short notice with no publicly announced opportunity to participate by third parties, Van Loucks was unable to submit any materials for consideration by the Commission at an early stage. However, given the fact that the Application for Review has been filed and the full Commission now has the opportunity to review the matter and rule on such an important policy, the Commission should consider the attached statement from Van Loucks, as well as the statement of a group of a duly certified child psychologists, along with the videotape of a representative, but gruesome "political advertisement" of a candidate for the U.S. Senate from Colorado.

to these Comments, Van Loucks submits his own statement (hereinafter "MVL Statement") detailing his discussions with one of the candidates espousing the use of these shocking anti-abortion spots, as well as the potential injury to his children and others. MVL Statement ¶¶6, 9-10. Exhibit A to this statement is a videotape of a spot run by Matthew Noah, a Christian Pro-Life candidate for U.S. Senate from Colorado showing the disturbing and disgusting pictures and video of bloodied fetuses and fetal tissue. Van Loucks also submits as Exhibit B to his statement the schedule he published to alert viewers to the timing of these anti-abortion ads. Finally, MVL submits as Exhibit C the statement of three psychologists detailing the harmful effect these shocking spots will have on children and others. It is Van Loucks' position that these Comments, statements and exhibits will provide the Commission with information critical to the resolution of this proceeding, but which has not yet been argued or introduced by any participating party.

BACKGROUND

Van Loucks is a Colorado resident and the parent of two minor children who are of an impressionable age and likely to be harmed in the event these anti-abortion spots are aired during prime time programming or during children's shows. In order to prevent this situation, Van Loucks filed suit in Boulder County

District Court in Colorado, seeking a temporary restraining order to prevent the showing of the anti-abortion advertisements until such time as the Commission could rule on the underlying petitions for declaratory ruling. In addition to being indecent, Van Loucks' Complaint alleged that these anti-abortion spots constituted an intentional infliction of emotional distress as well as an invasion of privacy.[4/] The anti-abortion spots were run in Colorado by Matthew Noah, a Christian Pro-Life Party candidate who, on information and belief, refused to delete the pictures of the fetuses upon request. MVL Statement, ¶6. Further, Mr. Noah refused to desist from running the anti-abortion advertisements during prime time programming, and refused to provide a schedule because people wouldn't watch them and "we'd lose the shock value." Id. Indeed, Mr. Noah stated to Mr. Van Loucks that it is his purpose and intent to upset and shock viewers. Id.[5/]

At this time, the Commission must address the harm to the children and others from these anti-abortion spots, the indecency of the advertisement itself, and the Commission's

---

4/ The Court denied injunctive relief on the grounds that such an order would constitute a prior restraint in violation of the First Amendment.

5/ For example, the images, while disturbing in their own right, are accompanied by background "horror show" type music.

refusal to allow broadcast licensees to either channel the advertisements to times more appropriate, or to otherwise censor the advertising. On information and belief, other candidates in other states have indicated their intent to "flood the airwaves" with ads of this nature just prior to the November election. MVL Statement ¶18. Unless the Commission addresses these issues now, it will be unable to responsibly fulfill its public interest mission mandated by the Communications Act and protect the interests and welfare of children and others in the viewing audience.[6/] Refusing this protection would allow the "no censorship" provision of Section 315(a) of the Communications Act, and the "reasonable access" provisions of Section 312(a)(7) of the Communications Act, to supercede the obligations of the Commission and its licensees to protect the viewing public and minor children from harmful, indecent, and obscene material.[7/]

6/ The U.S. Supreme Court has recognized society's right to restrict the availability of shocking materials to its youth as consistent with the First Amendment. F.C.C. v. Pacifica Foundation, 438 U.S. 726, 757-58 (1978)(Powell, J. concurring).

7/ Van Loucks adopts and supports the first two arguments set forth in Kaye, Scholer's Application for Review. Van Loucks agrees that the Bureau's ruling herein involves questions of law and policy that have not been fully resolved by the Commission. Further, the Bureau did not address the important issue of whether to allow broadcasters to observe their local communities' standards in making an indecency determination. This matter should be taken up by the full Commission on an expedited basis to prevent unnecessary and irreparable injury to the children who will be exposed to

[Footnote Continued Next Page]

I. THE COMMISSION SHOULD CONSIDER EVIDENCE OF THE HARM TO CHILDREN AND OTHERS ARISING FROM EXPOSURE TO SHOCKING AND INDECENT POLITICAL ADVERTISING

In its review of the Petitions for Declaratory Ruling, the Bureau failed to assemble or review any information before it issued its determination that the subject anti-abortion advertisements were not "indecent". Rather, the Bureau's ruling simply loosened the prohibition that limited broadcasters' ability to air "viewer advisories" prior to running these anti-abortion spots. This minor revision is insufficient from a public interest standpoint given the fact that children are impressionable, and realistically will not switch channels, turn off the television set, or call their parent when an advisory is run during children's viewing. Clearly, to fulfill its public interest mandate, the Bureau should have accepted -- indeed sought -- additional evidence as to the effect these anti-abortion advertisements could have on children and others who may be harmed by the gruesome images in these advertisements.[8/]

[Footnote Continued]

these unwarranted intrusions and intentionally distressful images, so as to allow broadcasters to censor or otherwise channel these horrible ads to times when children are less likely to be viewing television.

8/ The Commission has routinely proposed and adopted rules to protect children from the "harmful" effects of commercial

[Footnote Continued Next Page]

Attached hereto as Exhibit C to Van Loucks' statement is the declaration of Priscilla Zynda, Ph.D., Nancy Rainwater, Ph.D., and Diane Dudziak Salerno, Psy.D., on behalf of the professional group, Colorado Women Psychologists (the "CWP Declaration"). In that Declaration, the doctors express concern about the likely harmful effect these anti-abortion ads will have on specific populations within our society. The doctors state their belief tnat "these ads may be potentially harmful, particularly to children and certain populations of women: women who may have recently aborted, experienced a miscarriage or still-birth, are experiencing an unwanted pregnancy, or who are pregnant and thinking about having an abortion." CWP Declaration at p. 2. Certainly the risk groups identified by the doctors represent a significant segment of our society.

The CWP Declaration elaborates on the likely harmful effects that viewing these anti-abortion spots pose to each group identified. For example, the doctors state that "younger children have fears about bodily intactness and bodily injury. If they see these images of aborted fetuses, they could think that they could be injured or killed. Thus, distress could be

---

[Footnote Continued]

advertising, see, e.g., Children's Television Programming Order, 6 FCC Rcd. 2111 (1991); but the Bureau here is effectively allowing for more damaging images (and messages) to be broadcast without restriction.

experienced by these children if a parent is not present to help them understand and deal with their feelings." Id. The CWP Declaration goes on to warn that of the identified risk groups of women, those women who have been traumatized because of a fetal loss (either through miscarriage or still-birth) run the greatest risk of re-traumatization as a direct result of viewing these anti-abortion spots. CWP Declaration at p. 3.

Also submitted for the Commission's consideration and review is the Declaration of Mark Van Loucks (See attached statement). Mr. Van Loucks' statement details in a more general, but personal, way the effects that the airing of these ads has had on his family. Specifically, the running of these "political" advertisements has invaded the privacy of the Van Loucks' family, by forcing it to deal with sensitive, personal issues regarding their children's upbringing prior to when the Van Louckses had chosen to confront them. In response, Mr. Van Loucks has taken a number of steps to ensure that his family is not emotionally harmed from their unintentional but realistically uncontrollable viewing of these anti-abortion spots. Id. ¶¶6-7. He also relates his conversations with the candidate airing these anti-abortion spots, to put in proper perspective his claim that the protection of the political process under the Communications Act is being subverted for a dark and amoral purpose. Id., ¶6.

Van Loucks realizes that these materials represent a small aspect of the relevant legal analysis used in determining the proper treatment to be accorded these anti-abortion spots. However, due to the critical impact that these unusual advertisements have on a significant segment of our society, these types of showings most certainly should be examined before the Commission reaches its ultimate determination. And, such an examination logically leads to the conclusion that the subject anti-abortion spots present unusual circumstances, unanticipated by Congress when it enacted Sections 312(a)(7) and 315 of the Communications Act, and if left unaddressed serve only to ridicule the protections afforded viable and legitimate federal candidates.

The Commission has previously recognized that there may be circumstances where a broadcast licensee "might reasonably refuse broadcast time to political candidates during certain parts of the broadcast day." Codification of the Commission's Political Programming Policies, 7 FCC Rcd. 678, 682 (1991). Further, the Bureau itself has indicated, in a separate letter ruling, that a broadcaster must exercise his/her independent editorial judgment in determining whether particular material is obscene or indecent within the meaning of 18 U.S.C. § 1464. (See Letter to William T. Carroll, Esq., FCC Ref. No. 8210-AJZ, 92050480, released June 12, 1992).

In addition, when the U.S. Supreme Court balanced the First Amendment interests of programmers of patently offensive broadcast material against the privacy interests of the average American, the average American's privacy interests prevailed. Specifically, the Court stated that "patently offensive, indecent material presented over the airways confronts the citizen, not only in public, but also in the privacy of the home, where the individual's right to be left alone plainly outweighs the First Amendment rights of an intruder." Pacifica, 438 U.S. at 748, citing Rowan v. U.S. Post Office Dept., 397 U.S. 728 (1970).

Due to the draconian results of a station's refusing candidates access during particular times of the day, or otherwise censoring any political advertisement, the Commission should clearly mandate that, in the context of airing indecent or shocking material that could harm children and others, any federal candidate's spots containing such graphic and shocking depictions of bloodied fetuses are not required to be run, or alternatively, only during hours when children are not likely to be in the audience. Furthermore, to assist parents in preventing this invasion of privacy, the Commission should allow broadcast licensees to publish in newspapers, schedules of when these particular advertisements will be aired, without the threat of administrative sanctions based on the stations' purported censorship of the spots. As the Supreme Court has recognized, simple viewer advisories are not enough:

> [C]hildren may not be able to protect themselves from speech which, although shocking to most adults, generally may be avoided by the unwilling through the exercise of choice. At the same time, such speech may have a deeper and more lasting negative effect on a child than on an adult. For these reasons, society may prevent the general dissemination of such speech to children, leaving to parents the decision as to what speech of this kind their children shall hear and repeat....

Pacifica, 438 U.S. at 757-58.

II. THE COMMISSION CLEARLY POSSESSES THE AUTHORITY TO CHANNEL THE ANTI-ABORTION SPOTS

The varying parameters of the Commission's authority to mandate channelling of indecent programming was reviewed previously in this proceeding in Kaye, Scholer's original Petition for Declaratory Ruling. To briefly reiterate: In FCC v. Pacifica Foundation, 438 U.S. at 723, the Supreme Court reversed the D.C. Circuit and ruled that the FCC had the power to regulate indecent programming. According to the Court, in order to determine whether material broadcast is indecent, two primary criteria are used, 1) the presence of children in the audience, and 2) the repetitive and deliberate nature of the offensive material broadcast. Id. at 748-750.

In 1988, the D.C. Circuit issued its ruling in Action for Children's Television v. FCC, 852 F.2d 1332 (D.C. Cir. 1988)

("Act I"). Under Act I, the D.C. Circuit acknowledged the FCC's authority to restrict the airing of indecent material during those times when there is a reasonable risk that children will be in the audience. However, the Court vacated the section of the related FCC decision that set the "safe harbor" for "channelled" programming at midnight to 6 a.m. The Commission's Order on Remand after Act I was also appealed to the D.C. Circuit and addressed in Action for Children's Television v. FCC, 923 F.2d 1504 (D.C. Cir. 1991) ("Act II"). In Act II, the D.C. Circuit determined that the FCC's congressionally-mandated 24 hour ban on all indecent programming violated the First Amendment and did not comport with the Court's Order in Act I to create a constitutional safe harbor for indecent programming. Id. at 1508-10. In so doing, the D.C. Circuit recognized that the Commission was now required to enforce the post-Act I safe harbor channelling parameters of 8 p.m. to 6 a.m. This time frame remains in effect.

One recent addition to this historical review of the FCC's indecency channelling guidelines occured last week, when the FCC issued its Notice of Proposed Rule Making in MM Docket 92-223. Although the text of the Commission's proposal has not yet been released, the relevant News Release states that the Commission is seeking to implement a second congressionally-mandated safe harbor of midnight to 6 a.m. for

commercial broadcasters. See FCC Public Notice 24861, Report No DC-2233, released September 17, 1992. This action was taken pursuant to the mandates of the Public Telecommunications Act of 1991, which was signed by President Bush on August 26, 1992.

This historical review demonstrates that the courts' and the Commission's position on indecency has not wavered over the years: Indecent programming is entitled to the protection of the First Amendment; however, these protections are not absolute. This principle has been consistently demonstrated by the application of judicially-approved time restrictions. Understanding the rationale behind all of these decisions is not only instructive, but crucial to a responsible, logical and legally supportable resolution of this proceeding.

In Pacifica, the Court recognized that "broadcasting is uniquely accessible to children, even those too young to read." Pacifica, 438 U.S. at 749. The specific factual concern in Pacifica was that a child's vocabulary of "offensive expression" could be enlarged in an instant by being exposed to offensive programming. Id. Therefore, the Court determined that such a concern mandated the channelling of the responsible programming to such times when this outcome should not occur. As recognized by the CWP Declaration, the present situation presents the Commission with a different but unquestionably more compelling concern; that of whether the potential traumatization

of young children and certain adults in our society, by clearly offensive broadcast material, justifies the imposition of the same type of time, rather than content, restriction on the subject programming. The Commission's adoption of a sensible interpretation of the term "indecent" will ensure that this latter concern is equally protected.

III. THE COMMISSION'S ADOPTION AND ENFORCEMENT OF CHILDREN'S TELEVISION PROGRAMMING RULES STAND AT ODDS WITH ITS REFUSAL TO PROTECT CHILDREN FROM PSYCHOLOGICALLY DAMAGING PROGRAMMING

As a policy matter, the Commission's recent adoption and vigilant enforcement of concrete, inflexible time limitations on advertising during children's television programming, as compared to its more recent position against channelling the subject anti-abortion spots, cannot logically be reconciled. In the Children's Television Programming Order, 6 FCC Rcd. 2111 (1991), the Commission imposed strict regulations on the amount of commercial speech that could be presented during programming aimed primarily at audiences of children 12 years old and under. These rules were implemented pursuant to a federal legislative mandate. This legislation relied on the FCC's expertise to define many of the terms and paramters of these broadcasting limitations.

Approximately one year after the announcement of these children's television content limitations, the Mass Media Bureau steadfastly refused to impose time limitations on the anti-abortion advertising that admittedly is being targeted to run during programming that meets the definition of "children's programming" under the Children's Television Act. Id. at 2112. This preposterous result strongly suggests that the Commission is interpreting certain of its mandates too narrowly, and in a contradictory manner.

CONCLUSION

The Kaye, Scholer Application for Review presents the Commission with important questions of law and policy deserving expedited and thorough consideration. In order to satisfy the public interest standard entrusted to the Commission under the Communications Act, the Commission should expressly rule that broadcast licensees may censor or, at a minimum, channel graphic and shocking images of aborted fetuses into those periods of the day when there is no reasonable risk that children may be in the viewing audience. The Commission should also revise its interpretation of the Act's no censorship provision. The revised interpretation should allow broadcasters to publish advertisement schedules in newspapers, as well as allow broadcasters to air more serious viewer advisories than those currently approved by

the Bureau in its Letter Ruling. The Commission should not allow despicable and intentional efforts by single-minded individuals to disrupt the lives of the television viewing audience and children by availing themselves of the protections afforded legitimate candidates under the Communications Act. Such a ruling endangers the welfare and tramples the rights of children and others, thereby rendering useless the rules designed to protect the public from much less seriously shocking programming.

Respectfully submitted,

Mark Van Loucks

By: Theresa A. Zeterberg

John D. Seiver
Theresa A. Zeterberg
COLE, RAYWID & BRAVERMAN
1919 Pennsylvania Ave. N.W.
Washington, D.C. 20006
(202) 659-9750

Attorneys for Mark Van Loucks

September 25, 1992

EXHIBIT A

Videotape
30 Second Anti-Abortion Political Advertisement
Run By Matthew Noah on KUSA-TV Denver
August 10, 1992

Note: Videotape Submitted Only With
Original Filed With Secretary's Office

STATEMENT OF MARK VAN LOUCKS

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)
	)
Petition for Declaratory Ruling	)
Concerning Section 312(a)(7)	)
of the Communications Act	)

To: The Commission

STATEMENT OF MARK VAN LOUCKS

1. My name is Mark Van Loucks. I am a resident of Englewood, Colorado. My mailing address is 333 W. Hampden Ave., Suite 1005, Englewood, Colorado 80110.

2. I have a wife, Eva, and two sons -- Charlie (3-1/2) and Brandon (7), with whom I reside.

3. I am not associated with any political or abortion group with respect to my activities concerning this issue, nor will I be. Further, I am funding my efforts regarding this issue entirely myself. I am just a dad, and I am concerned about my kids.

4. I first became aware of the instant problem when the local (Denver) ABC affiliate aired a news piece indicating that a Boulder, Colorado resident, Mathew Noah, would soon be

airing TV spots on all stations in this area to support his candidacy for the U.S. Senate. The news piece further reported that Mr. Noah was running as the candidate of the "Christian Pro-Life Party", and that his ads would show graphic, detailed, close-up views of aborted fetuses. The news piece then showed the spot, blacking out electronically most (not all) features of the aborted fetuses. Finally, the station's manager was interviewed, indicating that the station was required under FCC rules to carry the advertisements of political candidates without any censorship whatsoever.

5. I did not (and do not) object to this candidate's expression of his opinion as regards abortion -- only to the manner in which he chose to do so.

6. I immediately contacted Mr. Noah personally, and and offered to fund entirely his political spots for the duration of his campaign if he would eliminate (only) the pictures of aborted fetuses from the spots, urging him that they would be harmful to children. He told me that, indeed, it was his "intention and purpose for the Lord" (to) "upset and shock (people) with these pictures". Further, when I asked him to provide a schedule of when the ads would run so that I could publish it in the newspapers, he refused, saying "if people knew when the ads will run, they wouldn't watch ... we'd lose the shock value."

7. A few days later, candidate Noah aired his ad showing aborted fetuses on two network affiliates here in Denver. (A copy of this spot -- which I had taped off the air, exactly as it ran -- is attached hereto as Exhibit A.)

8. The day after I viewed the news show, I commenced a series of activities in an effort to stop the airing of these political ads. The following is a summary of those activities during the last few weeks:

(a) I sued Mr. Noah in Boulder, Colorado District Court, asking the Court to stop the airing of his ads, at least until they can be reviewed by appropriate authorities;

(b) I approached several District Attorneys in Colorado, asking that criminal prosecution be brought under appropriate Colorado statute;

(c) I obtained the schedule of the ads from the stations' public files, and have published the schedule in both Denver newspapers as a warning to parents showing when the spots will run (Exhibit B); and

(d) I obtained the assistance of several prominent Colorado psychologists to evaluate the potential harm these ads will cause and have asked them to issue their opinion. (Their opinion is attached hereto as Exhibit C.)